DoD Policy on Homosexual Conduct

Session Purpose:

To apprise leaders of current DoD policy on homosexual conduct

DoD Policy on Homosexual Conduct

At conclusion of session, you will be able to:

- State basic points of DoD Policy
- Define sexual orientation
- Define homosexual conduct
- State Commander’s responsibilities
- Describe characteristics of credible information
- List staff resources who can provide assistance

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Agenda for Session:

- Briefing
- Questions and answers
- Discussion of policy-related scenarios
- Participant Evaluation
- Summary

DoD Policy on Homosexual Conduct

- The suitability of persons to serve in the Armed Forces is based on their conduct and their ability to meet required standards of duty performance and discipline
- Homosexual conduct is grounds for barring entry into the Armed Forces and for separation from the Armed Forces
- Sexual Orientation in NOT a bar to enlistment or to continued service

Source: DAPE HR-S Msg 010125Z Mar 94, subj: Homosexual conduct Policy

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Propensity - A propensity to engage in homosexual acts indicates a likelihood that a person engages in or will engage in homosexual acts.

Homosexual - A person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

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Statement

- can be conveyed through language or behavior
- indicates a propensity or intent to engage in homosexual acts
- is rebuttable

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ACTS - any bodily contact

- actively undertaken or passively permitted, between persons of the same sex for the purpose of satisfying sexual desires

and

- that a reasonable person would understand to demonstrate a propensity or intent to engage in act described above.

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What behaviors are NOT homosexual acts as defined by the DoD Policy?

<u>Associational Behavior</u>

- associating with known homosexuals
- marching in a gay rights rally in civilian clothes
- possessing or reading homosexual publications
- going to a gay bar

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Summary of DoD Policy -

- Sexual Orientation is a private/personal matter
- Conduct determines suitability for service
- Homosexual Conduct (S A M) is justification for administrative separation

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DoD Policy on Homosexual Conduct affects -

- Accessions
- Separations
- Criminal Investigations
- Security Investigations
- Military Training

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Accessions

- Individuals will NOT be asked to reveal whether they are heterosexual, homosexual or bisexual
- Sexual orientation ALONE is NOT a bar to entry into service
- All applicants will be informed of the policy concerning homosexual conduct

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Separation

- Suitability for service is based on CONDUCT
- DoD directs three bases for separation: S A M
- Discharge for engaging in homosexual conduct will normally be characterized as “Honorable” or “Under Honorable Conditions”

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Administrative Discharge “Under Other than Honorable Conditions” or Court-Martial MAY be appropriate if soldier attempted, solicited, or committed a homosexual act:

- by using force
- with a person under 16 years of age
- with a subordinate
- openly in public view
- for compensation
- aboard a military vessel or aircraft
- in a location under military control

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Criminal Investigations

- No Defense Criminal Investigative or other DoD law enforcement organization will conduct investigations solely to determine a soldier's sexual orientation
- Such organizations normally will NOT initiate criminal investigations into adult, private, consensual sexual misconduct where such misconduct is the ONLY offense involved

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Criminal Investigations (continued)

- In absence of aggravating circumstances, allegations of sexual misconduct will be referred to soldier's Commander
- If Commander is uncertain about any aspects of investigating alleged homosexual conduct, he/she should seek advice from the local SJA

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Personnel Security

- No investigations or inquiries solely to determine a soldier's sexual orientation
- No questions about sexual orientation on Personnel Security Questionnaires
- Only sexual CONDUCT may be questioned during investigations
- No information about homosexual orientation or conduct obtained during security clearance investigations will be used for separation proceding

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Military Training

- Soldiers to be informed of laws and regulations governing sexual conduct, including policies on homosexual conduct
- New training plan for DoD policy on homosexual conduct designed for commanders and personnel involved in recruiting, accession processing, criminal investigations, and administrative separations

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Commander's Responsibilities -

- Insure soldiers are briefed on DoD policy on homosexual conduct
- Insure refresher and optional individual training in military justice (AR 27-10, paragraph 19-2f)

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How should a Commander respond to allegations of homosexual conduct?

- Determine if alleged CONDUCT fits DoD definition of homosexual conduct
- Verify that information about alleged homosexual CONDUCT is credible
- Initiate informal fact-finding inquiry ONLY if CREDIBLE information exists

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What is “Credible Information?”

- comes from a reliable person
- is an observation (sight or sound) of conduct
- would lead to a reasonable person to believe the soldier making the described statement or committing the described act intended to convey the fact that he/she engages in or has propensity to engage in homosexual conduct

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What resources are available to the Commander who is dealing with an allegation of homosexual conduct?

- local SJA
- local law enforcement or criminal investigative organization

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How should a Commander carry out an inquiry?

- Confine all inquiries to alleged homosexual conduct (NOT orientation)
- Verify that information obtained is credible
- Seek legal advice as needed

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What should a Commander do if, during the course of the inquiry, he/she discovers possible conduct?

- Contact law enforcement or appropriate Defense Criminal Investigative Organization

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What should a Commander do if the inquiry fails to verify that a soldier engaged in homosexual conduct?

- Terminate the inquiry

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What should a Commander do if the inquiry verifies that a soldier did engage in act(s) of homosexual conduct?

- Seek legal advice on initiating administrative separation proceedings or UCMJ action

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Summary of Presentation

- Basic points of DoD policy on homosexual conduct
- Definitions of terms
- Responsibilities of Commander
- Sources of assistance available